

In re Application of: GUY, John.
Confirmation No: 9515
Application No.: 10/687,677
Examiner: LOCKARD, J. M.
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REMARKS

Claims 1-25 are pending in the application. Claims 19 to 25 are withdrawn as being directed to non-elected subject matter. The elected claims set forth, herein, are merely to comply with the Restriction Requirement and is not to be construed as surrender of any subject matter in the instant application. Applicants hereby reserve the right to pursue the subject matter of the canceled claims in one or more divisional patent applications.

Restriction Requirement

In the above-identified Office Action, the examiner set forth a restriction requirement and required election of one of the following groups under 35 U.S.C. § 121:

Group I: Claim(s) 1-18, in so far as they are drawn to non-naturally occurring nucleic acids encoding a functional ND4 mitochondrial protein, and isolated host cells (*in vitro*) comprising the same, classified in class 424, subclass 145.1, for example.

Group II: Claim(s) 15-25, in so far as they are drawn to methods for reducing dysfunction in a cell caused by a mtDNA mutation associated with Leber Hereditary Optic Neuropathy in a subject comprising administering a gene therapy construct comprising a non-naturally occurring polynucleotide encoding a functional ND4 mitochondrial protein, and the cells (*in vivo*) transformed thereby, classified in class 514, subclass 44 and class 424, subclass 93.21, for example.

In response, Applicants elect Group I: Claim(s) 1-18, in so far as they are drawn to non-naturally occurring nucleic acids encoding a functional ND4 mitochondrial protein, and isolated host cells (*in vitro*) comprising the same, classified in class 424, subclass 145.1, for example. This election is made without traverse.

The elected claims set forth, herein, are merely to comply with the Restriction Requirement and is not to be construed as surrender of any subject matter in the instant application. Applicants hereby reserve the right to pursue the subject matter of the canceled claims in one or more divisional patent applications. Applicants invite the Examiner to call the

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undersigned if it is believed that the above restriction election is incomplete or improper in any way, or if a telephonic interview will expedite the prosecution of the application to an allowance.

Although, Applicants believe that no extensions of time are required with submission of this paper, Applicants request that this submission also be considered as a petition for any further extensions of time if necessary. The Commissioner for Patents and Trademarks is hereby authorized to charge the amount due for any retroactive extensions of time and any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees paid on the filing or during prosecution of this application to Deposit Account No. 50-0951.

Respectfully submitted,
AKERMAN SENTERFITT



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